

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LUIS VASQUEZ,

Plaintiff,

v.

ORDER

06-cv-00743-bbc

STEVEN SCHUELER, Security Supervisor, Capt.;
CURT JANSSEN, Security Supervisor, Capt.;
CAPT. GEMPELER, Security Supervisor;
OFFICER WAYNE BAUER, Lieutenant;
GARY ANKARLO, Ph.D., PSUS;
SGT. JORDAN PREIST; SGT. JEFF MEYER;
SGT. ROBERT GUTJAHR; SGT. EMIL TONY;
SGT. BEN HILBERT; OFFICER PLYER KMIECIK;
OFFICER JOHN NICKEL; MARY ANN GORSKE;
TIMOTHY PRICE; JOSHUA FLETCHER; SCOTT
ROSS; JASON ROSENTHAL; CO KEYS; CO PONTOW;
BRETT MIERZEWJESKI and JEFF ROLINS,

Defendants.

In an order dated November 29, 2007, and in response to George v. Smith, --- F.3d ---, No. 07-1325 (7th Cir. Nov. 9, 2007), I applied Fed. R. Civ. P. 20 to this case and concluded that plaintiff's complaint must be divided into four separate lawsuits as described immediately below.

Lawsuit #1 is an action in which plaintiff may sue defendants Ben Hilbert, Mike Biersack, Michael Passig and Jaime Fuecht for their alleged use of excessive force against plaintiff on August 17, 2005, and defendants Jamie Fuecht, Steven Schueler, Ben Hilbert, Mary Ann Gorske, Timothy Price and Jordan Preist, for allegedly denying plaintiff medical care for injuries he sustained in the August 17 incident.

Lawsuit #2 is an action in which plaintiff may sue defendants Scott Ross, Jason Rosenthal, CO Keys, CO Pontow, Brett Mierzewjeski, Wayne Bauer, Jeff Rolins, Deborah Gempeler and Jeff Meyer for allegedly conducting an unconstitutional manual body cavity search of plaintiff on November 3, 2006. This lawsuit includes plaintiff's claim that during the search, defendant Bauer used a taser gun against him in retaliation for plaintiff's threat to file a lawsuit as well as plaintiff's claim that defendant Gary Ankarlo refused to provide plaintiff with mental health treatment after the November 3 incident.

Lawsuit #3 is an action in which plaintiff may sue defendants John Nickel and Joshua Fletcher for allegedly fondling plaintiff's genitals while conducting a manual body cavity search of him on August 21, 2006, and defendants Plyer Kmiecik, Curt Janssen, Robert Gutjahr and Emil Tony for allegedly failing to intervene to stop the search.

Lawsuit #4 is an action in which plaintiff may sue defendant Jody Lapine for being deliberately indifferent to plaintiff's health when she denied him psychotropic medication for approximately one week in June 2006.

Initially, I gave plaintiff until December 13, 2007, in which to advise the court whether he wished to proceed with one, two, three or all four of these actions. Later, however, plaintiff asked for clarification, which I addressed in an order dated December 10, 2007. In the same order, I extended to December 21, 2007, the date by which plaintiff was to advise the court how he intended to proceed. Now, plaintiff has responded to the orders of November 29 and December 10, 2007. He advises the court that he will prosecute all four lawsuits and that he wishes to prosecute Lawsuit #2 in the context of this action (that is, the action assigned case no. 06-cv-00743-bbc). Therefore, I will lift the stay with respect to plaintiff's claims identified above as Lawsuit #2. In all future filings in this case, the caption is to be modified to reflect that defendants Scott Ross, Jason Rosenthal, CO Keys, CO Pontow, Brett Mierzewjeski, Wayne Bauer, Jeff Rolins, Deborah Gempeler, Jeff Meyer and Gary Ankarlo are the only defendants in the case. These defendants have answered plaintiff's complaint and a preliminary pretrial conference has been held. However, because the stay has affected the ability of the parties to comply with previously set deadlines, a status conference will be scheduled promptly to adjust the schedule as needed.

With respect to plaintiff's decision to proceed with the claims raised in Lawsuits ## 1, 3 and 4, these actions shall be severed forthwith and assigned case numbers 07-cv-00723-bbc, 07-cv-00724-bbc and 07-cv-00725-bbc, respectively. To be clear,

- Plaintiff's claims identified as Lawsuit #1 will be litigated in case no. 07-cv-00723-

bbc. Defendants Ben Hilbert, Mike Biersack, Michael Passig, Jaime Fuecht, Steven Schueler, Mary Ann Gorske, Timothy Price and Jordan Priest are the only defendants in this case;

- Plaintiff's claims identified as Lawsuit #3 will be litigated in case no. 07-cv-00724-bbc. Defendants John Nickel, Joshua Fletcher, Officer Plyer Kmiecik, Curt Janssen, Robert Gutjahr and Emil Tony are the only defendants in this case; and
- Plaintiff's claims identified as Lawsuit #4 will be litigated in case no. 07-cv-00725-bbc. Defendant Jody Lapine is the only defendant in this case.

Plaintiff is aware that he owes a \$350 filing fee for each of the three new cases and that in each case he must pay an initial partial payment in the amount of \$4.60. As stated in this court's December 10 order, plaintiff's initial partial payments are due no later than December 27, 2007. As soon as the initial partial payments are received, the stays in each action shall lift automatically and the clerk of court will schedule a status conference to set new trial dates and adjust all deadlines that need to be adjusted.

ORDER

IT IS ORDERED that

1. The court accepts plaintiff's decision to continue to prosecute in the context of this case the claims identified in this order as Lawsuit #2. The stay relating to these claims

is LIFTED.

2. The clerk of court is requested to schedule a status conference in this case to be held before Magistrate Judge Stephen Crocker as soon as the court's calendar permits.

3. The court accepts plaintiff's decision to proceed in three new cases with the claims identified in this court's order as Lawsuits ##1, 3 and 4. These lawsuits are hereby SEVERED in accordance with Fed. R. Civ. P. 20. Lawsuit #1 is assigned case no. 07-cv-00723-bbc. Lawsuit #3 is assigned case no. 07-cv-00724-bbc. Lawsuit #4 is assigned case no. 07-cv-00725-bbc.

4. The clerk of court is requested to insure that the court's financial records reflect plaintiff's obligation to pay a \$350 filing fee for each of case nos. 07-cv-00723-bbc, 07-cv-00724-bbc and 07-cv-00725-bbc, beginning with separate initial partial payments in the amount of \$4.60 each. The initial partial payments are due no later than December 27, 2007.

6. If, by December 27, 2007, plaintiff fails to pay the initial partial payments necessary to proceed with case nos. 07-cv-00723-bbc, 07-cv-00724-bbc and 07-cv-00725-bbc, these severed actions will be dismissed without prejudice for plaintiff's failure to prosecute them. If, by December 27, 2007, plaintiff pays the required initial partial payments, the stays will lift automatically and status conferences will be scheduled promptly before Magistrate Judge Stephen Crocker in each case to set new trial dates and adjust other

deadlines as necessary.

Entered this 26th day of December, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge